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Open Local Government

Ministry of
Municipal
Affairs

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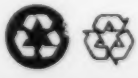

OPEN LOCAL GOVERNMENT

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OPEN LOCAL GOVERNMENT

INTRODUCTION

Over the last decade, there have been increasing demands from both members of the public and local government representatives for changes to the Municipal Conflict of Interest Act and to the Municipal Act provisions for open meetings and disposal of land, to make them fairer and more effective.

Complaints have been voiced that the Municipal Conflict of Interest Act places an unfair burden on the public to initiate prosecution of alleged conflicts of interest; that the open meeting provisions of the Municipal Act permit the conduct of councils' and boards' business in secret; and that surplus local government land has been sold without sufficient public notice.

In 1990, my Ministry circulated a Discussion Paper on Municipal Conflict of Interest to municipalities, local boards and other interested groups and individuals to elicit opinions on what changes should be made to the legislation to make it more just for the elected and the electorate.

Earlier this year, I appointed a consultation committee to examine all aspects of municipal conflict of interest. In July, 1991, this Municipal Conflict of Interest Consultation Committee, chaired by Cy Armstrong, reported its findings and recommendations, after conducting public meetings across the Province and analysing over 200 submissions.

The Committee's report and the comments received were used as a basis for the development of new municipal conflict of interest legislation. At the same time, I have broadened the scope of this initiative to include the related issues concerning open meetings and disposal of surplus land, and thus to provide an "Open Local Government" draft legislation package.

This proposal is designed to enhance accountability and openness of local government by:

1) Revising municipal conflict of interest legislation to:

- require disclosure of assets, liabilities and sources of income by all locally elected representatives; and

- establish a commission to investigate and prosecute alleged contraventions of conflict of interest legislation.

2) Establishing clear principles of openness for all municipal council and committee meetings, and for meetings of local boards, with exceptions which are limited and specific;

3) Providing minimum standards for disposal of real property owned by municipalities and local boards by:

   - ensuring that adequate public notice is given; and
   - ensuring that appropriate internal procedures are in place.

While these are different areas of legislation they share a number of themes that jointly represent a strong, accountable accessible local government. In addition, each component recognizes the differences between individual municipalities and local boards by permitting local discretion to open additional meetings and demand higher standards of their members, consistent with the purposes of the Acts. The proposed amendments to the legislation are described in greater detail in the explanatory notes which accompany the draft legislation.

In addition to the changes described above, I am proposing that the Ministries of Municipal Affairs and Education, in consultation with municipalities, school boards, local boards, and local government employee associations, develop a model code of conduct for employees. I am also proposing that the restrictions on local government employees who seek locally elected office also be reviewed.

This is a proposal. It is an indication of the direction in which the Government wishes to proceed. I am asking that you let us know by March 31, 1992, whether we are on the right track, recognizing that no system can be adopted if it is not workable.

The Government is committed to a strong, accountable, open and accessible local government.

Dave Cooke
Minister of Municipal Affairs

Written submissions may be sent by March 31, 1992 to:

OPEN LOCAL GOVERNMENT PROPOSAL
Municipal Government Structure Branch
Ministry of Municipal Affairs
11th Floor
777 Bay Street
TORONTO, Ontario
M5G 2E5

EXPLANATORY NOTES

CONFLICT OF INTEREST

The Municipal Conflict of Interest Act provides that members of municipal councils and local boards must declare a conflict of interest where they could benefit financially in debate or in voting at a council or board meeting, and are prohibited from participating in the decision-making. It is the responsibility of the elector to bring an alleged contravention of the Act before the judiciary.

Although the existing disclosure procedure would continue as the basis for declaring conflicts on particular issues, the amendments are substantial and consist of the following:

- Disclosure of assets by municipal councillors, school trustees, public utility commissioners and police village trustees:
  - within sixty days after election;
  - existence, but not value;
  - includes liabilities and income sources; and
  - applies also for spouses, minor children, and companies controlled by any of them.

- Disclosure of pecuniary interest by all members of council and local boards:
  - orally at the meeting where a conflict is first perceived by the member; and
  - in writing.

- A central register for the keeping of statements of disclosure of assets and pecuniary interest. The register would be available to the public.

- A Municipal Conflict of Interest Commission to advise, investigate and recommend prosecution in respect of alleged conflicts. The Commission would report to the Legislature, and be funded by municipalities and boards covered by the Act.

- The saving provisions of inadvertence and bona fide error would be removed and a broader range of penalties would be available to the courts for contravention.

- Acceptance of gifts and benefits would be prohibited, except for those of a social or protocol nature, up to a set value.

- Definitions to be revised or added include: advisor, community of interest, deemed interest, local board, meeting, member and pecuniary interest.

There are a number of implementation initiatives to be undertaken by the Ministry of Municipal Affairs and the Ministry of Education in cooperation with the local government sector are:

- The development of a model code of conduct for municipal and board employees, and
- A review of restrictions imposed on local government employees wishing to run for elected local government office.

The following draft has been prepared by the Ministry of Municipal Affairs for consultation purposes only. It does not contain any legal opinion or interpretation of the Municipal Conflict of Interest Act, 1983, and does not necessarily reflect the final intention of the Government of Ontario with respect to amendment of that Act.

1. *The purposes of this Act are,*

(a) to preserve the integrity, independence and accountability of local government decision making;

(b) to recognize, define and provide a consequence for the conflicts of interest that arise when,

(i) members of councils and local boards, and the persons whom councils and local boards appoint to advisory bodies, have certain pecuniary interests in matters being considered by those councils, local boards, and advisory bodies, and

(ii) those members or persons do not comply with the duties prescribed for them under this Act; and

(c) to facilitate public enforcement of this Act through the Municipal Conflict of Interest Commission.

2. *In this Act,*

"advisor" means a person, other than a member, appointed by a council or local board to an advisory body;

"advisory body" means a body other than a council or a local board, to which a council or local board has appointed at least one person and includes a body composed of one person;

"child" means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

"Commissioner" means the Municipal Conflict of Interest Commissioner appointed under section 22;

"community of interest in common with electors generally" means,

(a) a pecuniary interest in common with the electors within the area of jurisdiction and, if the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with electors within that part, and includes,

(b) a pecuniary interest by reason only of a person's occupancy of a residential property that is or may be affected by a decision of a council or local board in common with the electors within the area or part of the area of jurisdiction;

"controlling interest" means the interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding;

"council" means the council of a municipality other than an improvement district and means the board of trustees of an improvement district;

"elector" means,

(a) in respect of a municipality, or a local board thereof, other than a school board, a person entitled to vote at a municipal election in the municipality, and

(b) in respect of a school board, a person entitled to vote at the election of members of the school board;

"judge" means a judge of the Ontario Court (General Division);

"local board" means a school board, board of directors of a children's aid society, committee of adjustment, committee of management of a community recreation centre, conservation authority, court of revision, land division committee, public utilities commission, public library board, board of management of an improvement area, board of park management, board of health, police services board, planning board, district welfare administration board, trustees of a police village, board of trustees of a police village, board or committee of management of a home for the aged, suburban roads commission or any other board, commission, committee, subcommittee, body or local authority established or exercising any power or authority under any general or special Act in respect of any of the affairs or purposes, including

school purposes, of a municipality or of two or more municipalities or parts thereof, but does not include a committee of management of a community recreation centre appointed by a school board, a local roads board, a local services board or a negotiating committee appointed under the Municipal Boundary Negotiations Act;

"meeting" includes any regular, special, committee, subcommittee or other meeting of a council, local board, or advisory body as the case may be;

"member" means a member of a council or of a local board;

"municipality" means the corporation of a county, city, town, village, township or improvement district or of a metropolitan, regional or district municipality or the County of Oxford and a board, commission or other local authority exercising any power in respect of municipal affairs or purposes, including school purposes, in territory without municipal organization, but does not include a committee of management of a community recreation centre appointed by a school board, a local roads board or a local services board;

"pecuniary interest" means an interest consisting of, measured in or related to money;

"school board" means a board of education, public school board, secondary school board, Roman Catholic separate school board, Protestant separate school board or The Ottawa-Carleton French-language School Board;

"senior officer" means the chair or any vice-chair of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office;

"spouse" means a person of the opposite sex to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

3. *For the purposes of this Act, a person has a pecuniary interest in any matter in which a council, local board or advisory body, as the case may be, is concerned, if,*

(a) the person has a pecuniary interest in the matter;

(b) the person or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation or agency that does not offer its securities to the public,

(ii) has a controlling interest in, or is a director or senior officer of, a corporation or agency that offers its securities to the public,

(iii) is a member of a body,

(iv) is a partner or agent of a person, or

(v) is employed by a person or body,

that has a pecuniary interest in the matter; or

(c) the person knows that the spouse or any minor child of the person or a private company as defined in the Securities Act controlled by the spouse or minor child has a pecuniary interest in the matter.

4. *Sections 5, 6 and 15 do not apply to a pecuniary interest in any matter that a person may have,*

(a) as a user of any public utility service supplied to the person by the municipality or local board in like manner and subject to the like conditions as are applicable in the case of other users;

(b) by reason of being entitled to receive on terms common to other persons any service or commodity or any subsidy, loan or other such benefit offered by the municipality or local board;

(c) by reason of purchasing or owning a debenture of the municipality or local board;

(d) by reason of having made a deposit with the municipality, local board or advisory body, the whole or part of which is or may be returnable to the person in like manner as such a deposit is or may be returnable to electors generally;

(e) by reason of having an interest an any property affected by a work under the Drainage Act or under the Local Improvement Act;

(f) by reason of having an interest in farm lands that are exempted from taxation for certain expenditures under the Assessment Act;

(g) by reason of being eligible for election or appointment to fill a vacancy, office or position in the council, local board or advisory body when the council, local board or advisory body is empowered or required by any general or special Act to fill such vacancy, office or position;

(h) by reason only of being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board;

(i) by reason only of being a member of a council, local board, or advisory or other body when the membership is required by law by virtue of his or her office or results from an appointment by a council, local board or advisory body;

(j) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the person may be entitled by reason of being a member or advisor or

under a by-law passed pursuant to section 256 of the Municipal Act, or as a member of a volunteer fire brigade, as the case may be;

(k) by reason of having a pecuniary interest which is a community of interest in common with electors generally;

(l) by reason of membership on an English or French language section of a school board or an advisory body thereto if the board or advisory body is considering a matter related to language programming;

(m) by reason of membership in or volunteer activities for a non-profit organization, if the person receives no remuneration or financial benefit from the organization and the person's pecuniary interest is an interest in common with all other persons of the organization;

(n) by reason only of membership in a trade union as defined in section 1 of the Labour Relations Act or a professional association; or

(o) by reason only of an interest of the person which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the person.

Duty of Member

5.- (1) Where a member, either on his or her own behalf or while acting for, by, with or through another person, has any pecuniary interest in any matter which is the subject of consideration at a meeting of the council or local board, the member,

(a) if present, shall prior to any consideration of the matter at the meeting,

(i) orally disclose the interest and its general nature; and

(ii) complete and file, in the prescribed form, a written disclosure of the interest and its general nature with the clerk of the municipality or secretary of the local board;

influence the voting in any way, including by attempting to influence employees of the advisory body; and

(d) if absent, after becoming aware that any matter in which the member had a pecuniary interest was the subject of consideration at a meeting of an advisory body,

(i) shall disclose the interest in accordance with subclause a(i) at the next meeting of the advisory body that the member attends;

(ii) shall complete and file, before or at the next meeting of the council or local board that appointed the member, a written disclosure of the interest and its general nature with the clerk of the municipality or secretary of the local board.

(2) Where a meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall promptly leave the meeting or the part of the meeting during which the matter is under consideration.

Disclosure of Gifts

7.- (1) A member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) If a gift or personal benefit in subsection (2) exceeds $200 in value, or if the total

value received directly or indirectly from one source in any twelve-month period exceeds $200, the member shall immediately file with the clerk of the municipality or the secretary of a local board, as the case may be, a disclosure statement, in the form prescribed by the regulations, indicating the nature of the gift or benefit, its source and the circumstances under which it was given and accepted.

Disclosure of Assets

8. (1) This section applies only to members of,

(a) the council of a county, city, town, village, township or of a metropolitan, regional or district municipality or the County of Oxford;

(b) a school board;

(c) a public utility commission; and

(d) a police village.

(2) Subject to subsection (3) every member shall, within sixty days of being elected or appointed, file with the municipal clerk or the secretary of the school board, the public utility commission or the police village, as the case may be, a disclosure statement in the form prescribed by the regulations.

(3) The disclosure statement shall contain,

(a) a statement of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private companies as defined in the Securities Act controlled by any of them;

(b) a statement of the source of any income the member and the member's spouse and minor children, and private companies as defined in the Securities Act controlled by any of them, have received in the preceding twelve months or are entitled to receive in the next twelve months; and

(c) any information that is prescribed by the regulations.

(4) The disclosure statement is not required to include,

(a) the monetary value of the assets, liabilities or financial interests or the amount of income received or entitled to be received from any source;

(b) assets, liabilities and financial interests having a value of less than $1,000;

(c) the source of income, if the income paid from the source has a value of less than $1,000 in any twelve-month period;

(d) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes;

(e) cash on hand or on deposit with a bank listed in Schedule I or II to the Bank Act (Canada), trust corporation or other financial institution in Ontario that is lawfully entitled to accept deposits;

(f) Canada Savings Bonds and other investments or securities of fixed value issued or guaranteed by any level of government in Canada or an agency of such government;

(g) registered retirement savings plans that are not self-administered;

(h) investments in open-ended mutual funds;

(i) guaranteed investment certificates or other similar financial instruments;

(j) annuities and life insurance policies;

(k) pension rights; and

(l) the following liabilities:

1. Unpaid income taxes.

2. Support payments.

(5) The member may with the consent of the Commissioner omit or delete from the disclosure statement the source of income received by a member's spouse or minor child, or by a private company as defined in the Securities Act controlled by the spouse or child,

(a) in respect of services that are customarily provided on a confidential basis; or

(b) if the possibility of serious harm to the spouse's, child's or company's business justifies a departure from the general principle of public disclosure.

(6) If any of the information disclosed under this section significantly changes, the member shall file a supplementary disclosure statement of the changes with the municipal clerk or secretary of the school board, the public utility commission, or the police village, as the case may be, within thirty days of the change.

Enforcement of Members Duties

9. The question of whether or not a member has contravened section 5, 6, 7 or 8 may be tried and determined by a judge.

10.-(1) If a person has reasonable grounds for believing that a member has contravened section 5, 6, 7 or 8, the person may apply, in the prescribed form, to the Commissioner requesting that the Commissioner investigate the alleged contravention.

(2) A person can only make application under subsection (1) within 90 days after the person becomes aware that the member may have contravened section 5, 6, 7 or 8.

(3) An application under subsection (1) shall include a statutory declaration of the person containing,

(a) the reasonable grounds for believing the member has contravened section 5, 6, 7 or 8; and

(b) a statement that the person became aware within 90 days of the application being made that the member may have contravened section 5, 6, 7 or 8.

(4) The Commissioner, after receiving an application under subsection (1), shall conduct such investigations of the alleged contravention as he or she considers necessary.

(5) For the purpose of conducting an investigation under this section, the Commissioner,

(a) has the right of access, at all reasonable hours, to all relevant books, papers, documents or things of the member and of a municipality or local board; and

(b) has the powers of a commission under Part II of the Public Inquiries Act which Part applies to the investigation as if it were an inquiry under that Act.

(6) Upon completion of the investigation under subsection (4), the Commissioner,

(a) shall prepare a report outlining the apparent contraventions, if any, of section 5, 6, 7 or 8 by the member and submit it to,

(i) the member,

(ii) the person who applied under subsection (1), and

(iii) the council of the municipality or local board, as the case may, on which the member holds office;

(b) may, if the Commissioner considers it appropriate, apply to a judge for a determination of the question of whether the member has contravened section 5, 6, 7 or 8; and

(c) may authorize the person to apply to a judge for a determination of whether or not the member has contravened section 5, 6, 7 or 8.

(7) No application shall be brought under subsection (6) after the expiration of two years from the time at which the contravention was, or is alleged to have been committed.

11.-(1) Where a judge determines that a member or a former member while he or she was a member has contravened this Act, the judge,

(a) shall,

(i) impose a fine on the member or former member of not less than $500 and not more than $5,000, or

(ii) in the case of a member, suspend the member, without pay and benefits, for a period of not less than 30 days and not more than 90 days;

(b) may, in the case of a member, impose both penalties under clause (a).

(c) may, in the case of a member, declare the seat of the member vacant;

(d) may disqualify the member or former member from being a member for a period of not more than seven years; and

(e) may, where the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, where such party is not readily ascertainable, to the municipality or local board of which he or she is a member or former member.

(2) A member suspended from a council or local board under subsection (1) shall not during the period of the suspension,

(a) participate in any meeting of the council or local board as a member or otherwise;

(b) participate in any meeting of any body,

(i) to which the member has been appointed by the council or local board, or

(ii) on which the member is required by law to sit by virtue of the member's office on the council or local board; and,

(c) in the case of suspension from a council, participate in any meeting of any other council of which the member is also a member.

(3) Clause 38(c) of the Municipal Act, does not apply when the member is absent from meetings because of a suspension under this section.

12.-(1) An appeal lies from any order made under section 11 to the Divisional Court in accordance with the rules of court.

(2) The Divisional Court may give any judgment that ought to have been pronounced, in which case its decision is final, or the Divisional Court may grant a new trial for the purpose of taking evidence or additional evidence and may remit the case to the trial judge or another judge and, subject to any directions of the Divisional Court, the case shall be proceeded with as if there had been no appeal.

(3) Where the case is remitted to a judge under subsection (2), an appeal lies from the order of the judge to the Divisional Court in accordance with the provisions of this section.

13. The failure of any person to comply with section 5, 6 or 15 does not of itself invalidate any proceedings in respect of any such matter but the proceedings in respect of such matter are voidable at the instance of the municipality or of the local board, as the case may be, before the expiration of two years from the date of the passing of the by-law or resolution authorizing such matter unless to make void the proceedings would adversely affect the rights of any person acquired under or by virtue of the proceedings who acted in good faith and without actual notice of the failure to comply with section 5, 6 or 15.

14. Proceedings to suspend a member or to declare a seat vacant or to disqualify a member or former member for contravention of section 5, 6, 7 or 8, or to require a member or former member to make restitution where a contravention has resulted in personal financial gain, shall be had and taken only under this Act.

Duty of Advisor

15.-(1) Where an advisor, either on his or her own behalf or while acting for, by, with or through another person, has a pecuniary interest in a matter which is the subject of consideration at a meeting of an advisory body to which the advisor has been appointed by council or local board, the advisor,

(a) if present,

(i) shall orally disclose the interest and its general nature before any consideration of the matter at the meeting; and

(ii) shall complete and file, before or at the next meeting of the council or local board that appointed the member, a written disclosure of the interest and its general nature with the clerk of the municipality or secretary of the local board.

(b) advisors appointed by the council or local board, as the case may be.

(2) The central register of disclosure shall contain,

(a) written disclosures of a pecuniary interest under sections 5, 6 and 15;

(b) disclosure statements and supplementary disclosure statements of assets, liabilities, financial interests and sources of income under section 8; and

(3) disclosure statements of gifts or personal benefits under section 7.

(3) All documents in the central register of disclosure are public documents and may be inspected by any person upon request at the office of the clerk or the secretary, as the case may be, during normal office hours.

(4) Any person may make extracts from the documents and is entitled to copies of them upon payment for the preparation of the copies at such rate as the clerk or secretary, as the case may be, charges for the preparation of copies of other documents.

Remedy For Lack Of Quorum

18.-(1) Where the number of members who, by reason of the provisions of this Act, are disabled from participating in a meeting is such that at that meeting the remaining members are not of sufficient number to constitute a quorum, then, despite any other general or special Act, one-third of the total number of members of the council, local board or advisory body, as the case may be, shall be deemed to constitute a quorum, but such number shall not be less than two.

(2) Where in the circumstances mentioned in subsection (1), the remaining number of members who are not disabled from participating in the meeting is less than the quorum deemed by subsection (1), the council, local board or advisory body may apply to a judge without notice for an order authorizing the council, local board or advisory body, as the case may be, to give consideration to, discuss and vote on the matter out of which the interest arises.

(3) The judge may, on an application brought under subsection (2), by order, declare that section 5, 6 or 15 does not apply to the council or local board, as the case may be, in respect of the matter in relation to which the application is brought, and the council, local board or advisory body thereupon may give consideration same manner as though none of the members had any interest therein, subject only to such conditions and directions as the judge may consider appropriate and so order.

Offences

19.-(1) A member, former member, advisor or former advisor shall not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further his or her interests or the interests of any other person.

(2) A member, former member, advisor or former advisor shall not provide information described in subsection (1) to any other person.

20.-(1) No municipality or local board shall employ, or engage as an agent or independent contractor any person who is a former member of the council of the municipality or of the local board, as the case may be, until at least six months after the person ceases to be a member of the council or local board.

(2) No person who is a former member of a council of a municipality or of a local board shall become an employee, independent contractor or agent of the municipality or local board, as the case may be, until at least six months after the person ceases to be a member of the council or local board.

21. Every person who contravenes section 19 or 20 is guilty of an offence.

Municipal Conflict of Interest Commissioner

22.-(1) There shall be appointed, as an officer of the Legislative Assembly, a Municipal Conflict of Interest Commissioner to exercise the powers and perform the duties set out in this Act.

(2) The Commissioner shall be appointed by the Lieutenant Governor in Council on the address of the Legislative Assembly.

(3) The Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Legislative Assembly.

(4) The Commissioner may appoint officers of his or her staff to be Assistant Commissioners.

(5) The Commissioner and any Assistant Commissioner shall not, during their term of office, be a member of the Legislative Assembly, a council of a municipality or a local board.

(6) The Commissioner shall be paid such remuneration and allowances as are fixed by the Lieutenant Governor in Council.

23.-(1) The Commissioner may employ such staff as he or she considers necessary for the efficient operation of the office and may determine their salary and remuneration and the terms and conditions of employment.

(2) The Commissioner may lease any premises and acquire any equipment and supplies necessary for the efficient operation of the office of the Commissioner.

(3) The salary of the Commissioner and the expenses required for the operation of the office are payable out of money appropriated for them by Legislative Assembly.

(4) The accounts and financial transactions of the office of the Commissioner shall be audited annually by the Provincial Auditor.

(5) The Province shall recover the costs of the salary of the Commissioner and the expenses required for the operation of the office of the Commissioner from municipalities and local boards in the manner prescribed.

24.-(1) The Commissioner may initiate legal proceedings against any person in respect of a contravention of this Act.

(2) No legal proceeding shall be initiated for contraventions of sections 5,6,7 or 8 without the authorization of the Commissioner.

25. The Commissioner shall report annually upon the affairs of his or her office to the Speaker of the Legislative Assembly who shall cause the report to be laid before the Legislative Assembly.

General

26.(1) A municipality or local board may, with the approval of the Commissioner, pass bylaws to establish its own standards of conduct for members and advisors regarding conflict of interest.

(2) The by-law establishing the standards of conduct shall be filed with the Commissioner.

(3) In the event of a discrepancy between a by-law and this Act, the more stringent standard of conduct prevails.

(4) Sections 9 to 14 and 24 apply, with necessary modifications, to the enforcement of standards of conduct established under this section.

27.-(1) Despite section 252 of the Municipal Act, the council of every municipality may at any time pass by-laws,

(a) for contracting for insurance;

(b) for enabling the municipality to act as an insurer, despite the Insurance Act;

(c) for exchanging with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the Insurance Act, to protect a member of the council or of any local board thereof or an advisor who has been found not to have contravened section 5, 6, 7, 8 or 15 against any costs or expenses incurred by the member as a result of a proceeding brought under this Act, and for paying on behalf of or reimbursing the member for any such costs or expenses.

(2) The Insurance Act does not apply to a municipality acting as an insurer for the purposes of subsection (1).

(3) Despite subsections 387 (1) and (2) of the Insurance Act, any surplus funds and the reserve fund of a municipal reciprocal exchange may be invested only in such securities as a municipality may invest in under subsection 163(2) of the Municipal Act.

(4) The money raised for a reserve fund of a municipal reciprocal exchange may be expended or pledged for, or applied to, a purpose other than that for which the fund was established if two-thirds of the municipalities that are members of the exchange together with two-thirds of the municipalities that previously were members of the exchange and that may be subject to claims arising while they were members of the exchange agree in writing and if section 386 of the Insurance Act is complied with.

(5) A local board or an advisory body has the same powers to provide insurance for or to make payments to or on behalf of its members as are conferred upon the council of a municipality under this section in respect of its members.

(6) A by-law passed under this section may provide that it applies to a person who was a member at the time the circumstances giving rise to the proceeding occurred but who, prior to the judgment in the proceeding, has ceased to be a member.

28.-(1) The Minister may prescribe the forms required for the purposes of this Act.

(2) The Regulations Act does not apply to forms prescribed under this section.

29. The Minister may make regulations prescribing:

(a) information for the purposes of clause 8(3)(c); and

(b) the manner of recovering costs under subsection 23(5).

30. In the event of conflict between any provision of this Act and any provision of any general or special Act, the provision of this Act prevails.

CONSEQUENTIAL AMENDMENTS

Form 3 of the Municipal Act would be repealed and the following substituted:

FORM 3

DECLARATION OF ELECTED OFFICIAL

I, ..., do solemnly declare that I will faithfully and impartially, to the best of my ability, execute the office of ..... to which I have been elected in this municipality, and that:

1) I have not accepted and will not accept any payment or reward for the exercise of any partiality, dishonesty or other undue execution of this office;

2) I have read, understood and agree to comply with the provisions of the Municipal Conflict of Interest Act;

3) I shall not use information that is gained in the execution of my office and is not available to the general public to further or seek to further my private interest; and

4) I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force as if made under oath.

The Declaration contained in subsection 209(1) of the Education Act would be repealed and the following substituted:

DECLARATION

I, ..., do solemnly declare that:

1) I am not disqualified under any Act from being a member of (name of board);

2) I will faithfully and impartially, to the best of my ability, execute the office of trustee;

3) I have not accepted and will not accept any payment or reward for the exercise of any partiality, dishonesty or other undue execution of this office;

4) I have read, understood and agree to comply with the provisions of the Municipal Conflict of Interest Act; and

5) I shall not use information that is gained in the execution of my office and is not available to the general public to further or seek to further my private interest.

Declared before me at
.....in the
Province of Ontario..
.....this
.....day of
....., 19..

EXPLANATORY NOTES

OPEN MEETINGS

The Municipal Act currently provides that meetings of municipal councils are open to the public, with the exception of meetings of committees of council (including committee of the whole) and special meetings, both of which may be closed at council's discretion. These provisions also apply for meetings of most local boards.

The proposed amendments would require that regular, special or committee meetings of municipal councils and local boards be open to the public. The public's right to attend meetings would be limited only in the following circumstances:

- discretion to close a meeting for certain prescribed topics, including litigation, security, property acquisition and negotiation;

- mandatory requirement to close a meeting if discussing matters which must not be disclosed under the Municipal Freedom of Information and Protection of Privacy Act.

Municipal councils and local boards would be required to adopt procedure by-laws setting out the method of calling, conduct and proceedings for meetings.

Related amendments would be made to the Acts governing the regional, district, metropolitan municipalities and to the County of Oxford Act, to afford consistency with the Municipal Act provisions.

NOTE: Section numbers referred to in the draft legislation relate to Municipal Act Chapter M45 R.S.O. 1990

The following draft has been prepared by the Ministry of Municipal Affairs for consultation purposes only. It does not contain any legal opinion or interpretation of the Municipal Act, and does not necessarily reflect the final intention of the Government of Ontario with respect to amendment of that Act.

OPEN MEETINGS

DRAFT LEGISLATION

1. Section 55 of the Municipal Act is repealed and the following substituted:

55.-(1) In this section and section 55.1,

"local board" means a local board as defined in the Municipal Affairs Act, except municipal police services boards, library boards and school boards; and

"meeting" refers to a meeting of a council, a local board or a committee or subcommittee of a council or local board.

(2) Subject to this section, all meetings shall be open to the public.

(3) The head or other presiding officer may expel any person for improper conduct at a meeting.

(4) A meeting or part of a meeting may be closed to the public if the subject matter being considered relates to,

(a) the security of the property of the municipality or local board;

(b) personal matters about an identifiable individual, including municipal or local board employees;

(c) a proposed or pending acquisition of real property for municipal or local board purposes;

(d) labour relations or employee negotiations;

(e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;

(f) matters under the Municipal Boundary Negotiations Act or annexation of unorganized territory;

(g) a matter in respect of which a council, board, committee or other body has authorized a meeting to be closed under an Act of the Legislature or an Act of Parliament.

(5) A meeting shall be closed to the public if the subject matter relates to,

(a) the consideration of a request under the Municipal Freedom of Information and Protection of Privacy Act prior to final disposition of the request, if the council, board, commission or other body is designated as head of the institution for the purposes of that Act;

(b) a matter that the head of an institution is not permitted to disclose under the Municipal Freedom of Information and Protection of Privacy Act.

(6) If all or part of meeting is closed to the public, the clerk of the municipality or the recording official of the local board shall record in the minutes of the meeting where the decision to close is made,

(a) the time and fact of the holding of the closed meeting;

(b) the matter considered at the closed meeting;

(c) the clause or clauses in subsections (4) or (5) that were relied on to justify having the closed meeting; and

(d) the reasons why a closed meeting was necessary.

(7) The clerk of the municipality or the recording official of the local board, in making the minute referred to in subsection (6), shall not record any personal information as defined in the Municipal Freedom of Information and Protection of Privacy Act.

55.1.-(1) Every council and local board may adopt a procedure by-law for governing the calling, place and proceedings of meetings, and the conduct of members.

(2) The Minister may make regulations prescribing standards for the calling, place and proceedings of meetings of councils and local boards, and the conduct of members.

(3) In the event of a conflict between a procedure by-law passed under subsection (1) and a standard prescribed under subsection (2), the provision providing for greater access by the public to meetings or the more stringent provision governing the conduct of members prevails.

2. Section 57 of the Act is repealed and the following substituted:

57. The head of the council shall preside at all meetings of the council.

3. Section 58 of the Act is repealed and the following substituted:

58.-(1) The head of the council may at any time summon a specially scheduled meeting, and upon receipt of the petition of the majority of the members of the council the clerk shall summon a specially scheduled meeting for the purpose and at the time mentioned in the petition.

(2) If there is no by-law or resolution fixing the place of a specially scheduled meeting, that meeting shall be held at the place where the last regularly scheduled meeting was held.

4. Section 102 of the Act is repealed and the following substituted:

102. Every council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this Act as may be deemed expedient and are not contrary to law.

EXPLANATORY NOTES

DISPOSAL OF PROPERTY

At present, the Municipal Act gives municipalities and their local boards, except boards of education, total discretion to sell real property, provided that the purchaser may lawfully buy the property and the council acted in good faith.

The proposed amendments would require the municipal council or local board to declare that the property to be sold is surplus to its need and available for sale; and obtain an appraisal of the value of the property to be sold, unless the property qualifies for an exemption, to be established by regulation. Exemptions would include:

- resale of expropriated land to original owner;
- sale under municipal small business assistance program;
- undevelopable land.

Municipalities may offer surplus lands to other public bodies within their boundaries before offering lands for public sale.

Municipal councils and local boards would be required to follow procedures setting out the internal process and public notice requirements for the sale of real property.

Depending on the outcome of the Government's consultation on provincial acquisition of land for housing, the Province may reserve the right to acquire surplus municipal and local boards' real property.

Related amendments would be made to the Acts governing the regional, district, metropolitan municipalities and to the County of Oxford Act, to afford consistency with the Municipal Act provisions.

NOTE: Section numbers referred to in the draft legislation relate to Municipal Act Chapter M45 R.S.O. 1990

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DISPOSAL OF PROPERTY

DRAFT LEGISLATION

1. Section 193 of the Act is repealed and the following substituted:

193.-(1) In this section,

"local board" means a local board as defined in the Municipal Affairs Act, except school boards;

"real property" includes land and buildings;

"sale" includes leases of twenty-one years or longer.

(2) Subject to subsections (4) to (6), every council and local board may by by-law,

(a) establish procedures governing the sale of property by public tender, public auction or otherwise as the council or local board considers is in the best interests of the public; and

(b) determine the time when, the manner in which, the price for which and the person to whom any of the corporation's property is to be sold.

(3) The determination of a council under subsection (2) as to the procedure for sale of, time when, manner in which, price for which or person to whom any property of the corporation that the council may lawfully sell, shall be sold, is not open to question or review by any court so long as the council may lawfully sell the property, the purchaser is a person who may lawfully buy it and the council acted in good faith.

(4) Before selling any real property, every council and local board shall,

(a) declare at a meeting open to the public the real property to be surplus and no longer required for its purposes; and

(b) obtain at least one appraisal of the fair market value of the real property.

(5) The Minister may make regulations prescribing,

(a) standards of procedure for the sale by municipalities or local boards of real property by public tender, public auction, or otherwise;

(b) a class or classes of real property to which subsection (4) does not apply;

(c) the form and contents of a certificate of compliance with section 193; and

(d) the duties of the clerk of the municipality or the administrative head of the local board with respect to the certificate of compliance with section 193.

(6) In the event of a conflict between a procedure by-law passed under subclause 2(a) and a regulation under subsection (5), the provision providing greater access to information to the public prevails.

(7) Every council and local board may pass bylaws for the establishment and maintenance of a register of real property owned or leased by the municipality or local board, and for access by the public to that registry.

(8) The Minister may make regulations prescribing standards for the establishment and maintenance of registries of real property owned or leased by municipalities and local boards, and for access by the public to those registries.

(9) In the event of a conflict between a by-law passed under subsection (7) and a standard prescribed by regulation under subsection (8), the provision providing greater access to information to the public prevails.